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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5757 OF 2007

Ms. Pushpalata D. Borude ... Petitioner

V/s

M/s. Pan India Paryatan Ltd. & anr. ... Respondents

Mr. Rakesh Sawant for Mr.B.J.Sawant for the petitioner.

Mr. Naushad Engineer i/by PDS Legal for the Resp.No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 26TH SEPT., 2007.

P.C.:

1. The petition challenges the order of the Industrial Court allowing the revision application filed by the respondent No.1 employer and dismissing the revision application filed by the petitioner. The petitioner's revision application has been filed contending that the Labour Court had erred in denying 50% back wages while granting reinstatement with continuity of service. The employer had filed the revision application contending that the decision of the Labour Court in allowing the complaint by directing the reinstatement with continuity of service and 50% back wages is erroneous since all the misconducts had been proved in the enquiry and the

Labour Court proceeded on the footing that only one misconduct had been proved before the enquiry officer.

2. By an order dated 5.5.2005, the Labour Court in Complaint (ULP) No. 342 of 2000 has held that the enquiry conducted against the petitioner was fair and proper and that the findings arrived at by the enquiry officer were not perverse. This order admittedly has not been challenged by the petitioner. Thus the Labour Court was in error in concluding that only one misconduct has been proved against the workman when in fact the enquiry officer had held the workman guilty of all the charges levelled against him. The Labour Court has concluded that the findings of the enquiry officer that all the charges have been proved were not perverse. In these circumstances, the Labour Court ought to have considered the fact that the punishment had been imposed on the petitioner on the basis that all charges had been proved. This is a fundamental error which the Labour Court has committed in restricting his consideration as to whether the punishment was shockingly disproportionate only to the incident which occurred on 8.7.1998.

3. In my view, therefore, the Industrial Court has committed no error by taking into account the fact that

the findings of the enquiry officer were not perverse and based on these findings the punishment of dismissal was not severe or disproportionate.

4. Petition rejected.

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